



ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

40 CFR Part 80

[EPA-HQ-OAR-2011-0135; FRL 9927-17-OAR]

RIN 2060-AS36

Partial Withdrawal of Technical Amendments Related to: Tier 3 Motor Vehicle Fuel and Quality Assurance Plan Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comment on certain elements of the Tier 3 Amendments direct final rule published on February 19, 2015, we are withdrawing those elements of the direct final rule. EPA intends to consider the comments received and proceed with a new final rule for the withdrawn elements. The remaining elements will go into effect pursuant to the direct final rule.

DATES: Effective May 5, 2015, EPA withdraws the amendments to 40 CFR 80.1453, 80.1616, and 80.1621 published at 80 FR 9078 on February 19, 2015.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, Michigan 48105; telephone number: 734-214-4131; email address: MacAllister.Julia@epa.gov.

SUPPLEMENTARY INFORMATION: We stated in the Tier 3 Technical Amendments direct final rule published on February 19, 2015 (80 FR 9078) that if we received adverse comment by April 6, 2015, as to any part of the direct final rule, those parts would be withdrawn by

publishing a timely notice in the Federal Register. Because EPA received adverse comment, we are withdrawing the amendments that were the subject of these adverse comments and they will not take effect. Three specific provisions are being withdrawn, as described below.

First, 40 CFR 80.1453: In the Renewable Fuel Standard (RFS) Quality Assurance Program (QAP) Rule (79 FR 42078, July 18, 2014), EPA added additional product transfer document (PTD) requirements for renewable fuels that informed parties that took ownership of the renewable fuel that they would need to (a) use the fuel as it was intended, i.e., for transportation use; and, (b) incur a renewable volume obligation (RVO) if the fuel was exported. Shortly after publication of the QAP final rule, we received questions on whether these PTD requirements would apply downstream to the end users, including residential heating oil owners and people filling up their fuel tanks at fuel retail stations. EPA provides downstream end user exemptions to the PTD requirements in other fuels programs, and the direct final rule included similar exemptions for RFS PTD requirements. The words “or custody” were inadvertently added to the RFS PTD requirements and we received several comments pointing out that applying the PTD requirements to the transfer of custody of renewable fuels would be costly to industry and not beneficial to the RFS program. In this action we are withdrawing all of the changes to 40 CFR 80.1453.

Second, 40 CFR 80.1616: The direct final rule included some clarifying language for when credits expire and are reported. We received a comment advocating for small refiners and small volume refineries to be allowed to use credits past January 1, 2020 – to effectively receive a small refiner- and small volume refinery-specific period of lead time before these parties must comply with the Tier 3 sulfur standards. Although it is not clear whether this comment is germane to the provisions of the direct final rule, in light of the short time frame for withdrawal

of the direct final rule, we have decided to treat this as an adverse comment on the amended rulemaking provisions and we therefore are withdrawing the proposed changes to 40 CFR 80.1616.

Third, 40 CFR 80.1621: Following publication of the Tier 3 Final Rule (79 FR 23414, April 28, 2014) we were contacted by some refiners to clarify if/when small volume refineries could be disqualified, because there was language inadvertently deleted from the regulatory text as part of the Tier 3 final rule. In re-inserting this text in the direct final rule, we clarified that small volume refinery disqualification was akin to small refiner disqualification. We received adverse comment raising the issue that the new wording is confusing because it does not explicitly state exactly when and under which circumstances that disqualification could occur, and also that the term “small refinery” was used instead of the correct term “small volume refinery”. In this action we are withdrawing all changes to 40 CFR 80.1621.

EPA published a parallel proposed rule on the same day as the direct final rule. The proposed rule invited comment on the substance of the direct final rule. EPA intends to consider the comments received and proceed with a new final rule. As stated in the parallel proposal, EPA does not plan to institute a second comment period for the proposed action with respect to the provisions that are withdrawn by this notice.

The amendments for which we did not receive adverse comment are not being withdrawn and will become effective on May 5, 2015, as provided in the February 19, 2015 direct final rule.

Accordingly, the amendments to 40 CFR 80.1453, 80.1616 and 80.1621 on February 19, 2015 (80 FR 9078), are withdrawn as of May 5, 2015.

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential Business Information, Diesel fuel, Fuel additives, Gasoline, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: April 30, 2015.

Gina McCarthy,

Administrator

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